

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ALASKA FISH FERTILIZER, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 78-212

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$100 civil penalty for odor allegedly in violation of respondent's Section 9.11(a) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on November 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney, Martin J. Durkan. Respondent appeared by its attorney, Keith D. McGoffin. Reporter Marilyn Hoban recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto of which official notice is taken.

9 II

10 Alaska Fish Fertilizer, appellant, has a plant for the manufacture
11 of fish fertilizer at 727 Lind Avenue S.W., Renton, Washington. The
12 plant is located in an industrial park away from residences and retail
13 businesses. Raw fish slurry is brought to the plant by tank car then
14 transferred via pipes into closed tanks within the plant, and then by
15 other pipes into bottles. The entire system is thus "closed."

16 III

17 Respondent received a complaint from an employee of a wholesale
18 business located 75 to 100 feet from the fish fertilizer plant. The
19 complainant testified that the odor from the fertilizer plant violated
20 his sense of smell. The odor did not, however, cause the complainant,
21 nor any other person, to leave the area, nor were there any physical
22 effects to persons who confronted the odor. The complainant was able
23 to carry on his business at all times despite the occurrence of the
24 reported odor about two days per week during the month of August.

25 In order to express the intensity of an odor, the respondent uses a
26 scale of 0 through 4 with the following assigned meanings:

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Rating

Description

0

No detectable odor.

1

Odor barely detectable.

2

Odor distinct and definite, any unpleasant characteristic recognizable.

3

Odor strong enough to cause attempts at avoidance.

4

Odor overpowering, intolerable for any appreciable time.

Inside the complainant's place of business the odor was between 1 and 2.

IV

On August 22, 1978, respondent's inspector visited the site in response to the complaint received. While standing outside the complainant's business, the inspector detected a number 3 odor emanating from appellant's fertilizer plant.

V

Employees of other businesses near the appellant's plant have encountered odor from the plant but found it to be inoffensive. One such business is located in the same building as the complainant, others are next door to and across the street from the appellant's fertilizer plant.

VI

Appellant received a Notice of Civil Penalty (No. 3979) by which respondent assessed a civil penalty of \$100. From this, appellant appeals.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these Findings, the Pollution Control Hearings Board
2 cores to these

3 CONCLUSIONS OF LAW

4 I

5 Respondent alleges that the odor from appellant's fertilizer
6 plant violated Section 9.11(a) of respondent's Regulation I which states:

7 It shall be unlawful for any person to cause or permit
8 the emission of an air contaminant or water vapor, including
9 an air contaminant whose emission is not otherwise prohibited
10 by this Regulation, if the air contaminant or water vapor
causes detriment to the health, safety or welfare of any
person, or causes damage to property or business.

11 The odor emanating from appellant's plant on August 22, 1978, did not
12 cause detriment to human health or safety nor damage to property or
13 business. Regarding the remaining element of "detriment to the . . .
14 welfare of any person," we have previously held that such detriment
15 must consist of an "unreasonable interference with enjoyment of life
16 and property." Boulevard Excavating, Inc. v. Puget Sound Air Pollution
17 Control Agency, PCHB No. 77-69 (1977) and Cudahy Company v. Puget Sound
18 Air Pollution Control Agency, PCHB No. 77-98, et al. (1977). On all of
19 the facts of this appeal we conclude that an unreasonable interference
20 with life and property has not occurred and that appellant has not
21 violated respondent's Section 9.11(a) as alleged.

22 II

23 Any Finding of Fact which should be deemed a Conclusion of Law is
24 hereby adopted as such.

25 From these Conclusions, the Board enters this

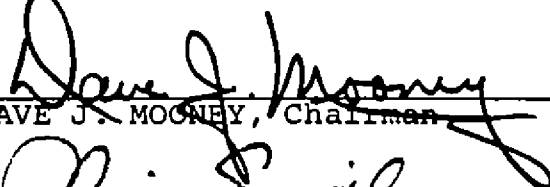
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

ORDER

The Notice of Violation (No. 3979) and \$100 civil penalty are each hereby reversed.

DONE at Lacey, Washington, this 29th day of November, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member